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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 5th February 1957

S.R.O. 531.—Whereas the election of Shri Jagdish Prasad Khare, son of Shri Bindra Prasad, resident of Ghoghar Rewa, P.S. Rewa, Tahsil Huzoor, District Rewa, as a member of the Vindhya Pradesh Legislative Assembly from Deosar constituency of that Assembly, has been called in question by an election petition presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Jamuna Prasad, son of Pt. Vindheshwari Pd. resident of village Sura, P.S. Managawan, Tahsil Sirmaur, District Rewa;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

IN THE COURT OF ELECTION TRIBUNAL VINDHYA PRADESH, REWA

ELECTION PETITION No. 6 of 1954

Shri Yamuna Prasad, S/o Pt. Vindheshwari Prasad, Resident of village Sura, P.S. Mangawan, Tahsil Sirmaur, District Rewa, Vindhya Pradesh.

Versus

1. Shri Jagdish Prasad Khare, s/o Bindra Prasad, r/o Ghoghar Rewa, P.S. Rewa, Tahsil Hazur, District Rewa, Vindhya Pradesh.
2. Shri Baijnath Dubey, s/o Jhagru Dube, r/o Ghoghar Rewa, P.S. Rewa Tahsil Huzur, District Rewa, Vindhya Pradesh.
3. Shri Guru Gangadhar, s/o r/o village Phulkesh, P.S. Gadhwara, Tahsil Deosar, District Sidhi, Vindhya Pradesh.
4. Shri Bhanja Prasad, s/o Bishambhar Deo, r/o village Dhanaha, P.S. Jiawan, Tahsil Deosar, District Sidhi, Vindhya Pradesh.
5. Shri Guru Charanlal, s/o r/o Sidhi, District Sidhi Vindhya Pradesh, C/o Jagdish Prasad Khare, B.A.L.L.B., Vakil Sidhi—Respondents.

PRESENT

1. Shri Syed Matin Ahmed, B.A., LL.B., Retired District & Sessions Judge, Madhya Pradesh, *Chairman*.
2. Shri Durga Prasad, District & Sessions Judge, Rewa, *Member*.

3. Shri Durgeshwar Dayal Seth, Bar-at-Law, Advocate, High Court, Allahabad.—*Member.*

Shri Keshav Prasad Shukla for the Petitioner.

Shri Harish Kumar, Advocate, for Respondent No. 1.

ORDER

(By Shri D. D. Seth)

This is an election petition under section 80 of the Representation of the People Act 1951 (herein-after called the Act) calling in question the election of Respondent No. 1, Shri Jagdish Prasad Khare, to the Vindhya Pradesh Legislative Assembly from Deosar Constituency on a number of grounds.

The petition was contested by Respondent No. 1 who filed a written statement in reply to the allegations in the petition. Respondent No. 2, beyond filing a written statement, took no interest in the proceedings. No other respondents put in any appearance and the case proceeded *ex-parte* against them.

On 16th October, 1954 the Tribunal passed an order directing the petitioner as well as the respondent No. 1 to supply better particulars by amending their pleadings. An objection was raised on behalf of the Respondent No. 1 to the effect that the particulars asked for by the Tribunal from the petitioner could not be supplied at this stage "because they are not at all mentioned in the supposed list". It was also contended that in spite of this the allegations of corrupt practices cannot be gone into enquiry because either they are vague or they are not according to section 83 of the Representation of People Act 1951.

We decided to consider these objections and framed the following preliminary issues:—

1. Whether better particulars regarding the facts already contained in the Election Petition and the list of particulars attached to it are not permissible under the Representation of the People Act.

2. Whether the allegations of corrupt practices cannot be enquired into for the reasons stated by the Respondent No. 1.

These issues were decided on 22nd November 1954 by an order which was as follows:—

PRELIMINARY ORDER

Order on Preliminary Issues passed on 22nd November, 1954

This is an election petition filed by Shri Yamuna Prasad, who was one of the candidates for the election for a seat in the Vindhya Pradesh Legislative Assembly from the Deosar Constituency to get the election of the successful candidate, Shri Jagdish Prasad Khare, Respondent No. 1, and the election as a whole, declared void on various grounds, as stated in the petition and the lists of particulars accompanying it. Respondent No. 1 appeared and contested the petition. He filed a written statement replying to the allegations in the petition. The trial proceeded *ex parte* against other respondents.

(2) On going through the pleadings of the parties we found that they were not clear in certain particulars and needed amplification. We, therefore, on 16th October, 1954 passed an order directing the petitioner as well as the respondent No. 1 to supply better particulars by amending their pleadings. The order passed by us reads as under:—

"Petitioner and the respondent No. 1 are, in the meanwhile ordered to supply better particulars by applying for amendment, of their pleadings as detailed below:—

(i) Petitioner should state clearly and specifically in para. 7(b) (ii) and (iii) how and in what manner the nomination papers of Shri Guru Gangadhar and Shri Jagdish Prasad were not validly drawn up and duly filled in.

(ii) In para 9 of the petition the petitioner has alleged that the electoral roll of village Rehi of Deosar Constituency was not supplied to the Presiding Officer as a result of which the voters of that village could not exercise their right of franchise. He should state how many voters were deprived of their right of franchise by reason of this omission and what way the result of the election was materially affected.

(iii) In list 'A' of particulars of corrupt practices filed with the petition, the petitioner has mentioned a few villages and has stated about 'other villages' of which the names have not been mentioned. He should give the names of other villages also.

As regards respondent No. 1 he should supply better particulars in respect of the following:—

(i) In reply to the allegations in para 3 of the petition the respondent No. 1 has not admitted that all the nomination papers of all the candidates were accepted. He should state whose nomination papers were not accepted.

(ii) In reply to para 7(a) of the petition and list 'A' of the particulars of corrupt practices, Respondent No. 1 has neither admitted nor denied whether Shri Satindra Singh is a Kanungo of Deosar Tahsil. He should admit or deny this statement specifically and categorically.

(iii) In reply to para 8 of the petition the respondent should state whether or not villages Harra Chandre was left out from Constituency in the Government Notification, calling upon the constituency to elect members, and whether it was added only 2 days before the poll.

(iv) From the endorsement of the Election Commission on the original petition, filed by the petitioner, it appears that the petition was filed on 27th March 1954. Respondent No. 1 should state how he has calculated the period of limitation and how according to him the petition is barred by time.

Both, the Petitioner and the Respondent No.1, should supply the above particulars and amend their pleadings as ordered above by 19th October, 1954.

Case for 18th October, 1954."

(3) The Petitioner complied with the Tribunal's order and applied for amendment of his pleadings by supplying better particulars on 19th October, 1954. The Respondent No. 1 did not and was granted further time, at his request, till 30th October, 1954, and the case was adjourned to 13th November, 1954. Respondent No. 1 amended his written statement by supplying better particulars, as ordered on 13th November, 1954; and at the same time he filed an application stating that the particulars asked for by the Tribunal from the petitioner cannot be supplied at this stage "because they are not at all mentioned in the supposed list". He also contended "that in spite of this the allegations of corrupt practices cannot be gone into enquiry because either they are vague or they are not according to section 83 of the Representation of the People Act, 1951".

(4) We decided to consider these belated objections, raised by the Respondent No. 1, on merits and with that object in view framed the following preliminary issues:—

1. Whether better particulars regarding facts already contained in the election petition and the list of particulars attached to it are not permissible under the R. P. Act?
2. Whether the allegations of corrupt practices cannot be enquired into for the reasons stated by Respondent No. 1 ?

Findings on Preliminary Issues

Pre-Issue No. 1.—These are permissible.

Pre-Issue No. 2.—These can be enquired into, and the omission regarding dates can be supplied by the petitioner by applying for amendment.

Reasons for Findings

(5) Arguments, at some length, were addressed to us by the learned counsel of the parties in support of their respective contentions. In the first place the learned counsel for the Respondent No. 1 contended that under the provisions of the Representation of the People Act, 1951 the Election Tribunal, appointed under section 86 (1) *ibid*, for the trial of an election petition. For this proposition allow any amendments, what-so-ever-, of an election petition. For this proposition of law he relied on sections 81, 83, 90 (2) and (4) and 92 of the R. P. Act. Section 81 deals with the presentation of petitions. 83 lays down what the contents of the petition should be. Section 90 (2) states that subject to the provisions of the R. P. Act and of any Rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure

applicable under the Code of Civil Procedure to the trial of suits, and clause (4) thereof says that notwithstanding anything contained in section 85, the Election Tribunal may dismiss an election petition which does not comply with the Provisions of sections 81, 83, and 117. It will be pertinent here to state what the section 85 is about. This section empowers the Election commission to dismiss the petition which does not comply with the provisions of section 81, section 83, or section 117. In section 85 the words used are 'shall dismiss' whereas in section 90 (4) the words are 'may dismiss'. Respondent No. 1's contention is that in view of the provisions of these sections if an election petition does not comply with the provisions of sections 81 and 83, the only alternative left to the Tribunal is to dismiss the petition under section 90 (4), and that no amendment of the petition is permissible. Amendment of the particulars included in the list can be allowed under sub-section (3) of section 83 for a limited purpose of further and better particulars in regard to any matter referred to therein, as the Tribunal in its opinion, may consider necessary. Respondent No. 1's Counsel has further urged that section 90 (2) deals with procedure and section 92 deals with powers of the Tribunal and that section 90 (2) comes into play after the hearing of the petition has actually commenced. According to him the Tribunal cannot exercise any power which a court can exercise under the Code of Civil Procedure unless that power is specifically conferred upon it, and as the power to allow amendment of the petition has not been specifically conferred upon the Tribunal under section 92 of the R. P. Act, 1951, leave to amend the petition in the present case cannot be granted.

(6) Petitioner's Counsel in reply controverted the points raised by respondent's learned counsel in the course of his argument. He submitted that tribunal's power to allow amendment of petition and particulars is not so restricted as has been suggested by the Respondent's Counsel. And although no fresh particulars or new materials can be introduced by way of amendment in a petition and the list of particulars attached to it, is always open to the Tribunal to get the particulars, already stated in the petition and the list, clarified or amplified, as the case may be, if they lack clarity. He urged that section 92 of the R. P. Act confers upon the Tribunal powers which it can exercise without any restrictions and which cannot be taken away by any rules framed under the Act, whereas the general power of procedure given to the Tribunal under section 90 (2) is subject to the rules which may modify or limit or restrict the powers that a Tribunal may exercise similar to the power exercised by a Court under the Civil Procedure Code. And as section 90 (2) lays down that subject to the provisions of this Act and any rules made thereunder every petition shall be tried by the Tribunal, as nearly as may be, in accordance with procedure applicable under the Code of Civil Procedure to the trial of suits, and in the absence of any restrictions having been imposed in the matter of amendment of petitions, either in the Act or in the rules framed thereunder, the Tribunal has every power to allow the amendment of the petition.

(7) We have considered the arguments advanced by the learned counsel of the parties carefully, and in our opinion there is some force in what the learned counsel of the petitioner has stated. Section 90 (2) of the R. P. Act directs that every election petition shall be tried by the Tribunal, as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits. This is, however, subject to the provisions of the R. P. Act and rules made thereunder. There is nothing in the Act itself or the rules made thereunder to show that the Tribunals have been debarred from exercising this power. The fact that some powers have been specifically conferred upon the Tribunal under section 92 of the R. P. Act does not, in our opinion, prevent the Tribunal from exercising other powers under the Code of Civil Procedure as contemplated by section 90 (2) of the Act. As pointed out by the Bombay High Court in *Sitaram Hirachand Birla versus Yograj Singh Shankar Singh parthar* (reported in E.L.R. Vol. II-Part III Page 282 at pages 288-89). "The whole of the Civil Procedure Code, as its very name implies, deals with procedure. In the course of procedure the court always exercises powers and when the court is exercising its powers it is exercising them in order to carry out the procedure laid down in the Code. Therefore, the procedure and powers in this sense are really inter-changeable terms and it is difficult to draw a line between the procedure and power. The power conferred under section 92 is not a substantive power, it is a procedural power, a power intended for the purpose of carrying out the procedure before the Tribunal." With this view we respectfully agree.

(8) It may further be noted that, as pointed out by the Bombay High Court in the case referred to above, under section 90(4) the power of dismissing the petition which does not comply with the provisions of sections 81, 83 or 117, is not made obligatory upon the Tribunal. The words used in this section are 'may

dismiss'. This discretion would not have been given to the Tribunal by the Legislature if it wanted to deny the power to allow the amendment of the petition so as to bring it into conformity with section 83. As remarked in the aforesaid case "If the intention of the Legislature was that every petition that did not comply with the provisions of section 83 must be dismissed and no amendment should be permitted, then the Legislature would have used appropriate language and would have cast an obligation upon the Tribunal to dismiss the petition. But the very fact that the Legislature has left it to the discretion of the Tribunal clearly goes to show that the Legislature conferred the power upon the Tribunal in proper cases to amend the petition and to bring it in conformity with section 83 so that it need not be dismissed." With this view also we are in respectful agreement.

(9) Coming to the amendments already ordered in this particular case, it may be noted from the order, dated 16th October, 1954, passed by us and quoted fully in this order, that the amendments ordered were only of formal nature and did not introduce any new factors or facts, which fact has been conceded by the Learned Counsel for Respondent No. 1 also. They were simply in the nature of amplifications of certain particulars already stated in the petition and the lists of particulars. This is evident from a perusal of the pleadings of the parties and the order passed by us on 16th October, 1954, calling upon the petitioner and the Respondent No. 1 to supply better particulars. The amendments ordered were, in our opinion, necessary for the purpose of ensuring a fair and effectual trial of the petition and did in no way alter the nature of the original petition. It was held in *Awadhesh Pratap Singh versus Brij Narain and others* (A.I.R. 1954 Allahabad 245, Vol. 42 C.N. 134) that "where a tribunal in the exercise of its discretion allows the petitioner to add to the number of villages mentioned in list II where undue influence was exercised on voters, and corrupt practices were adopted, because in its opinion such amendment was necessary for the purpose of ensuring a fair and effectual trial of the petition, the order allowing the amendment cannot be said to have altered the nature of the original petition and cannot be interfered with under Article 226 of the Constitution". In this view of the case the order passed by us allowing the amendments was proper, and we think that irrespective of any provisions in the Act the Tribunal has an inherent jurisdiction to pass an order for amendments of such formal character. In this connection we might invite a reference to a ruling of Madras High Court (A.I.R. 1954 Madras 336-AS. *Subbaraj versus M. Muthiah and others*) in which it was held, "That amendments can be allowed by courts under their inherent powers, when there is no express statutory provision providing for it, has been recognised in a number of decisions under Section 151, Civil P.C." Venkatarama Ayyar J., who decided this case further remarked in his judgment "That it was unnecessary to go into the question whether the Tribunal had jurisdiction to order an amendment of the petition, as the amendments ordered in the case were of a formal character and as every Tribunal has inherent jurisdiction to permit clerical and formal amendments and that the Election Tribunal had exercised a sound discretion in permitting the verification to be amended as required by O. 6, R. 15 and that its order was eminently reasonable and just".

(10) For the reasons stated above, we are clearly of the opinion that the Tribunal has power to allow amendment of an election petition, within certain limits, for the purpose of ensuring a fair and effectual trial of the petition, and there is no force in respondent No. 1's contention that the Tribunal's jurisdiction in the matter of allowing amendments of an election petition is altogether barred by the provisions of the R. P. Act. We accordingly hold that the order of this Tribunal directing the petitioner to supply better particulars regarding facts already contained in the election petition and the list of particulars attached to it was quite justified and permissible under the provisions of the Representation of the People Act, 1951, and Respondent No. 1's objection in this connection is untenable and must be rejected.

(11) As for preliminary issue No. 2, the respondent's Counsel was unable to point out in what way the particulars in the lists were vague and indefinite except certain omissions of dates. Section 83(2) of the R.P. Act requires that the date and place of the commission of corrupt or illegal practices should be given in the particulars. The petitioner would have been well advised to give the dates in the particulars of corrupt and illegal practices as enumerated in the list. These omissions he can supply even now by applying for amendment of particulars, as provided in section 83(3) of the R.P. Act. In other respects the particulars, as given in the lists, are, in our opinion, sufficient to proceed with the petition.

(12) Thus, in result, the respondent No. 1's application objecting to the amendment of the petition as ordered by the Tribunal, and alleging that the allegations of corrupt practices in the particulars are vague and cannot be enquired into for

that reason, is liable to be rejected and it is accordingly dismissed. We make no order about costs.

FINAL ORDER

Shri Jamuna Prasad who had filed this petition was a candidate for election to the Vindhya Pradesh Legislative Assembly from the Deosar Constituency. Shri Jagdish Prasad Khare respondent No. 1 was set up by the Congress Party as a candidate for election from the same constituency. Shri Bajjnath Dube, Shri Guru Gangadhar, Shri Bhanja Prasad and Shri Guru Charan Lal were the other candidates. On 13th November, 1953, which was the last date for withdrawal of candidature, respondent No. 5 Shri Guru Charan Lal withdrew his candidature. The election, therefore, took place between the remaining 5 candidates on the 13th December 1953 and the following were the votes secured by the respective candidates:—

1. Shri Jagdish Prasad Khare	..	..	..	..	1398
2. Shri Bajjnath Dube	..	..	..	..	1337
3. Shri Jamuna Prasad	..	..	..	..	997
4. Shri Guru Gangadhar	..	..	..	..	893
5. Shri Bhanja Prasad	..	..	..	about..	400

The respondent No. 1 Shri Jagdish Prasad Khare, having secured the largest number of votes, was declared duly elected.

The petitioner has challenged the election of respondent No. 1 on various grounds. It has been alleged in the petition that the respondent No. 1 himself directly and indirectly through his agents, workers, supporters and canvassers acquired the help of Government servants for the furtherance of his prospects in the said election between 20th November and 13th December, 1953. It is further contended that the result of the election has been materially affected by the improper acceptance of the nomination papers of Shri Bajjnath Dube, Shri Guru Gangadhar and Shri Jagdish Prasad Khare respondent No. 1. Further it is contended that the result of the election has been materially affected as village Harra Chandreh of Deosar constituency was left out from the constituency in the Government Notification at the time of calling upon the constituency to elect a member for Vindhya Pradesh Legislative Assembly and was added in the constituency only 2 days before the polls took place depriving thereby the candidates a reasonable opportunity for canvassing among the voters of the said village. It has further been alleged that the electoral roll of village Rehi of Deosar constituency was not supplied to the Presiding Officer as a result of which 92 voters of that village could not exercise their right of franchise which has materially affected the result of the election. The petitioner further contended that the respondent No. 1 himself and through his workers, supporters, canvassers and agents committed the corrupt practice of undue influence by administering oath of 'Basudeo' (Peepal tree) to the voters of village Jhakhrawal on the 11th December 1953. The last contention of the petitioner is that the Return of the election expenses filed by the respondent No. 1 is false in material particulars. The petitioner therefore prays that the election of respondent No. 1 and the election as a whole be declared void with costs to the petitioner.

The respondent No. 1, in his written statement, denies the allegations in the petition and has contended that no corrupt or illegal practices were resorted to by him or his agents and that in any case the result of the election has not been materially affected. According to the respondent No. 1 none of the nomination papers of any candidate was wrongfully accepted. The respondent No. 1 denies that either he or his agents took the help of Government servants in the election. It is further denied that the village Harra Chandreh was added to the Deosar constituency only two days before the polls. Respondent No. 1 denies having exercised any undue influence over any voter by administering any oath, whatsoever. Lastly it is contended that the election expenses were correctly shown in the Return. The respondent No. 1 prays that the petition be dismissed with costs to the respondent No. 1.

On the pleadings of the parties we framed the following issues:—

ISSUES

Issue No 1.—Is the petition barred by time as alleged by the respondent No. 1?

Issue No. 2.—(a) Was Shri Durga Singh Patwari a Patwari of Halka Katarihar in Deosar Tahsil at the time of Election?

(b) Whether the respondent No. 1 himself directly or indirectly through his agents, supporters and canvassers has acquired the help of Shri Durga Singh

Patwari and Shri Satindra Singh Kanungo, Government servants, in furtherance of his prospects in the election between 20th November and 13th December, 1953 in the villages stated in the list 'A'?

Issue No. 3.—(a) Whether the nomination papers of any of the respondents namely Shri Baijnath Dubc, Shri Guru Gangadhar and Shri Jagdish Prasad Khare were wrongly accepted for the reasons stated in para. 7 (b) (i), (ii) and (iii) of the petition?

(b) If so, what was its effect on the result of the election?

Issue No. 4.—(a) Was the village Harra Chandreh left out from the constituency in the Government Notification published at the time of calling upon the constituency to elect the Member for Vindhya Pradesh Legislative Assembly and was it added therein only two days before the poll took place?

(b) Has this fact affected the result of the Election?

Issue No. 5.—(a) Was the Electoral Roll of village Rehi of Deosar constituency not supplied to the Presiding Officer?

(b) Could the voters of that village not exercise their rights of franchise as a result of this?

(c) Was the result of election materially affected thereby?

(d) Whether any objection to this non-supplying of the electoral roll was taken by any voters concerned? If not, to what effect?

Issue No. 6.—(a) Were the voters of any of the villages, mentioned in list 'B' filed with the petition, administered the oath of Vasudeo by the respondent No. 1 and by Shri Gopal Sharan Singh, Minister for Justice, by the latter with the connivance or to the knowledge of the former or his agents, to vote for the respondent No. 1.

(b) If so, does this fact amount to interference with the free exercise of the electoral rights of the petitioner or the electors, and comes within the meaning of major corrupt practices as defined in Section 123 of the R.P. Act 1951?

Issue No. 7.—(a) Had Shri Shambhu Nath Shukla, Shri Lal Dan Bahadur Singh and Shri Lal Gopal Sharan Singh incurred any expenses for respondent No. 1 in connection with respondent No. 1's election?

(b) Has the respondent No. 1 not shown these expenses in the return of election expenses?

Issue No. 8.—Has the respondent No. 1 not shown expenses incurred by him in entertaining his workers, supporters, Agents and canvassers and the payments made by him to them in the Return of Election Expenses?

Issue No. 9.—Is the election of respondent No. 1 void for the reasons state in issue No. 7 and 8?

Issue No. 10.—To what relief are the parties entitled?

At one stage on 14th February 1955 while the petitioner's evidence was being led, the petitioner absented himself without leave of the Tribunal and his counsel sent words that he had no instructions. The Tribunal, therefore, decided to proceed with the petition *suu motu* and examined 3 witnesses, whose evidence it considered to be material for proper adjudication of the petition, as Court witnesses. The Tribunal overruled the objection of the respondent No. 1 objecting to the trial of the petition in the absence of the petitioner. The petitioner, however, appeared later on 14th March, 1955 and was allowed by the Tribunal to conduct the case from the stage of his re-appearance without the right of adducing more evidence.

The parties have produced both oral and documentary evidence in support of their contentions and have argued the case at length before us. I would now take up the issues *seriatim*—

Issue No. 1.—The learned counsel for the respondent No. 1 did not press this issue.

My answer, therefore, to this issue is that the petition is not barred by time.

Issue No. 2.—Shri Durga Singh Patwari was produced as witness No. 4 by respondent No. 1 and he has admitted that he was the Patwari of Patwari Halka Katarihar in Deosar Tahsil at the time of the bye-election in 1953.

My answer, therefore, to this issue is in the affirmative.

(b) The contention of the petitioner is that the respondent No. 1 himself⁺ directly or indirectly through his agents, supporters and canvassers acquired the help of Shri Durga Singh Patwari and Shri Satindra Singh Kanungo, Government servants, in furtherance of his prospects in the election between 20th November and 13th December 1953 in the villages Bairahwa, Dhaurahwa, Sirgudi Katarihar and Bagahiya coming under the Patwari Halka Katarihar of Deosar Tahsil and in villages Boda, Darbari, Khatai Borhadol and Gir. In support of this contention the petitioner produced P.W. 1 Jamuna Prasad, P.W. 8 from Khelawan, P.W. 10 Ram Das Verma and P.W. 13 Shri Ram Nath Singh Deputy Commissioner of District Sidhi. In rebuttal the respondent No. 1 produced R.W. 1 Jagdish Prasad, R.W. 4 Durga Singh, R.W. 5 Satrugan Singh, R.W. 10 Satindra Singh, R.W. 13 Lal Pratap Singh, R.W. 17 Jagannath Viswakarma and R.W. 18 Swamikartik. The P.W. 1 is the petitioner himself. He has deposed that Respondent No. 1 did not ask Durga Singh Patwari and Satindra Singh Kanungo for his help in his presence. He also admitted that he did not complain to higher officials about the alleged conduct of the Patwari and the Kanungo. P.W. 8 Ram Khelawan says that during his visit to the villages Dhaurahiwa, Bagaiya, Katariha, in connection with the canvassing he had learnt from the people that the Patwari of that locality was canvassing the voters for the Congress Candidates. This clearly is hearsay and cannot be relied upon. P.W. 10 Ram Das Verma, however, says that on the day of polling he saw Satindra Singh Kanungo working and canvassing for the Respondent No. 1 at Khatai polling station and further says that he reported this matter to Shri Pratap Singh, Superintendent of Police who had visited the polling station. Shri Pratap Singh, R.W. 13 has denied that any complaint was made to him. No documentary evidence has been filed in support of the version of P.W. 10.

The evidence of P.W. 13 Shri Ram Nath Singh on this point is too general. He admits that he received complaints regarding certain patwaris that they were canvassing in the election but he did not remember their names and could not say as to where Shri Satindra Singh Kanungo was posted on duty on the date of polling.

The allegations of the kind, as in this issue, being by way of charge of corrupt practice, have to be established by clear, consistent, conclusive and direct evidence, as is required to substantiate a criminal charge. In other words the petitioner must prove his allegations to the hilt. The evidence produced falls far short of that standard and it is impossible to give a finding on this issue in favour of the petitioner.

I would, therefore, hold that the petitioner has failed to substantiate his allegations forming the basis of issue No. 2.

Issue No. 3.—(a) The learned counsel for the petitioner has conceded that it could not be proved that respondent No. 1 Shri Jagdish Prasad Khare's nomination paper was improperly accepted.

Regarding the allegation of improper acceptance of the nomination paper of Guru Gangadhar, respondent No. 3, the learned counsel for the petitioner submitted that as Guru Gangadhar had signed the nomination paper first and his proposer and seconder afterwards it did not amount to being "subscribed by the candidate himself as assenting to the nomination" as laid down in section 33 sub-section (1) of the Act. Guru Gangadhar, in his written statement, has accepted this allegation.

In my opinion, the course adopted by Guru Gangadhar was somewhat irregular, but does not appear to be contrary to any provisions of the Act. The nomination takes place when the nomination paper properly completed and subscribed is delivered to the Returning Officer. The nomination paper does not become invalid just because the candidate signed it first before it was signed by the proposer or the seconder. The learned counsel for the petitioner has also conceded that this irregularity was only of technical nature and not of any substantial character. My finding, therefore, is that the nomination papers of the respondent No. 1 and Shri Guru Gangadhar, respondent No. 3 were not improperly accepted.

The case of the nomination paper of Shri Baijnath Dube, respondent No. 2, is, however, on a different footing.

We have heard, the learned counsel for the petitioner and respondent No. 1 on this point at great length and I find that there is no decided case which is identical with the facts of this case, which could help us one way or the other.

The counsel for the parties have referred to a large number of rulings of various Election Tribunals but it is not necessary to refer to them in view of the authoritative rulings of the Hon'ble the Supreme Court to which a reference will be made later.

The allegation of the petitioner with regard to Shri Baijnath Dube's nomination paper is that his nomination paper was wrongly accepted inasmuch as the thumb impression of his proposer and seconder were not properly verified and duly attested. The learned counsel for the petitioner submitted that the thumb impressions of the proposer and the seconder of Shri Baijnath Dube were not put, as is required by law, before the Returning Officer. He further submitted that those thumb impressions were not verified and attested by Returning Officer. Thus, according to him mandatory provisions of law have not been complied with and the acceptance of Shri Baijnath Dube's nomination paper was improper.

The provisions regarding presentation of nomination paper and requirements for a valid nomination are laid down in section 33 of the Act which is to be read with section 2 sub-section (K) of the Act and with Rule, sub-rule (2) of the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951.

Section 33 sub-section (1) of the Act reads thus:—

"On or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by his proposer or seconder between the hours of 11 O'clock in the forenoon and 3 O'clock in afternoon, deliver to the Returning Officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and subscribed by the candidate himself as assenting to the nomination and by two persons referred to in sub-section (2) as proposer and seconder". Section 2 sub-section (K) of the Act is:—

"Signed" in relation to a person who is unable to write his name means authenticate in such manner as may be prescribed.

Rule 2 sub-rule (2) to the Representation of the People Act (Conduct of Election and Election Petitions) Rules, 1951 reads thus:—

"For the purpose of the Act or these rules, a person who is unable to write his name shall, unless otherwise expressly provided in these rules, be deemed to have signed an instrument or other paper if he has placed a mark on such instrument or other paper in the presence of the Returning Officer or the Presiding Officer or such other Officer as may be specified in this behalf by the Election Commission and such officer on being satisfied as to his identity has attested the mark as being the mark of such person."

Exhibit P-11 is the list of filled nomination papers filed in this case. A perusal of this clearly shows that the thumb impressions of the proposer and the seconder have not been verified and attested by the Returning Officer. Further there is nothing to show that these thumb impressions were put before the Returning Officer. Shri Ram Nath Singh P.W. 13 who was the Returning Officer at the time of this bye-election, has been examined and during his examination he has nowhere said that the thumb marks were put in his presence or that he verified and attested them as required by law.

The learned counsel for the respondent No. 1 has conceded that there was no attestation of the thumb impressions. He, however, submitted that the defect was only of a technical nature which was not of a substantial character. He urged that section 36 sub-section (4) lays down that the Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character.

He further urged that the only important ingredient of Rule 2 sub-rule (2) of the Representation of the People Act (Conduct of Election and Election Petitions) Rules, 1951 is the satisfaction of the Returning Officer as to the identity of the person placing the mark on the nomination paper.

I am afraid, I am unable to agree with the learned counsel for the respondent No. 1. In my view what is required by section 33 sub-section (1) of the Act is that the nomination must be a nomination paper completed in prescribed form and subscribed by the candidate himself as assenting to the nomination and by two persons referred to in sub-section (2) as proposer and seconder. Rule 2 sub-rule (2) of the Representation of the People (Conduct of Election and Election Petitions) Rules 1951, in my opinion, makes it obligatory for the person who is unable to write his name to place a mark on the nomination paper

in the presence of the Returning Officer and further enjoins that the Returning Officer must be satisfied as to his identity and also must attest the marks being the mark of such person.

Thus, the three important and, in my opinion, mandatory ingredients of this rule are (1) placing of mark on the nomination paper in the presence of the Returning Officer by a person who is unable to write his name (2) satisfaction of the Returning Officer as to the identity of the person placing the mark and (3) attestation of the mark by the Returning Officer as being the mark of such a person.

In the present case it has been satisfactorily proved by oral and documentary evidence that the proposer and the seconder of Shri Baijnath Dube did not put their thumb marks in the presence of the Returning Officer and further that the Returning Officer did not attest the marks. In my view the provisions of section 33 sub-section (1) of the Act and of rule 2 sub-rule (2) of the Representation of the People (Conduct of Election and Election Petitions) Rules 1951 are mandatory inasmuch as the nomination paper should be filed strictly in accordance with these provisions and consequently any omission to comply with these rules must be fatal to the validity of a nomination paper. The defect of non-attestation is not of a technical nature but of a substantial character.

I am fortified in this conclusion by a ruling of the Hon'ble Supreme Court reported in A.I.R. 1954 Supreme Court page 510 Rattan Anmol Singh and another Vs. Chaudhari Atma Ram and others. In this ruling the Hon'ble Supreme Court has laid down that the question of attestation is not mere technical or unsubstantial requirement.

In view of the above my finding on this issue is that the nomination paper of Shri Baijnath Dube was improperly accepted.

3(b) Under section 100 sub-section (1) (c) of the Act the election can be declared wholly void if in the opinion of the Tribunal the result of the election has been materially affected by the improper acceptance or rejection of any nomination paper. It is, therefore, necessary for me now to decide whether the improper acceptance of Shri Baijnath Dube's nomination paper materially affected the result of the election.

The contention of the petitioner is that if Shri Baijnath Dube's nomination paper had been rejected all the wasted votes would have been cast for the petitioner. The case of the petitioner is that he was a candidate at the bye-election on behalf of the Praja Socialist Party and Shri Baijnath Dube was also a candidate on behalf of the same party. According to him there were two candidates on behalf of the P.S.P. because the Provincial Executive Body of the party had suggested the petitioner's name and the General Secretary of the All India Praja Socialist Party had suggested the name of Shri Baijnath Dube and as the Central Parliamentary Board could not decide the matter before the date of withdrawal the candidature of both, the petitioner and Shri Baijnath Dube, continued in the election. According to the petitioner's case Shri Baijnath Dube was officially nominated by the Central Parliamentary Board of the Praja Socialist Party as the party candidate and although the petitioner continued to be a candidate in the election he kept himself in the background. The petitioner contends that if Shri Baijnath Dube's nomination paper had been rejected he alone would have been a candidate on behalf of the Praja Socialist Party. Thus according to him the improper acceptance of Shri Baijnath Dube's nomination paper materially affected the result of the election. The petitioner has been corroborated in the above contention by P.W. 8 Ram Khelawan, P.W. 9 Ram Lakhan, P.W. 10 Ram Das Verma and P.W. 11 Shri Jagdish Chandra Joshi all of whom have deposed that if for any reason the nomination paper of Shri Baijnath Dube had been rejected the petitioner would have been declared as the official candidate of the Praja Socialist Party. They have further deposed that in such an event the wasted votes of Shri Baijnath Dube would have been cast in favour of the petitioner.

It has been admitted by Mohammad Shakur R.W. 3, that the petitioner was a candidate on behalf of the Praja Socialist Party.

The learned counsel for the respondent No. 1 vehemently urged that it was not proved that the improper acceptance of Shri Baijnath Dube's nomination paper resulted in any material effect on the election. He drew our attention to the statement of the petitioner P.W. 1 that the cause of the defeat of the Praja Socialist Party was that there were two candidates put up on behalf of the party and the votes were divided. The learned counsel for Respondent No. 1 urged that the petitioner himself never said that in case Shri Baijnath Dube's nomination

paper was rejected all the wasted votes would have gone to him. He drew our attention to a Ruling of the Hon'ble Supreme Court reported in A.I.R. 1954 Supreme Court page 513 Vashist Narain Sharma Vs. Dev Chandra and others which lays down that the "language of section 100 sub-section (1) (c) of the Act is too clear for any speculation or possibility. The section clearly lays down that improper acceptance is not to be regarded as fatal to the election unless the Tribunal is of opinion that the result has been materially affected. Where the finding of the Tribunal that the result of the election has been materially affected is speculative and conjectural the Supreme Court will interfere with the finding in special appeal".

The Hon'ble Supreme Court in the ruling cited above further held "but we are not prepared to hold that the mere fact that the wasted votes are greater than the margin of votes between the returned candidate and the candidate securing the next highest number of votes must lead to the necessary inference that the result of the election has been materially affected. That is a matter which has to be proved and the onus of proving it lies upon the petitioner. It will not do merely to say that all or a majority of the wasted votes might have gone to the next highest candidate."

I have, therefore, to see if the petitioner has proved by positive evidence that the wasted votes of Shri Baijnath Dube would have been cast in his favour if the nomination paper of Shri Baijnath Dube had not been improperly accepted.

It has been amply proved by the evidence on record that both Shri Baijnath Dube and the petitioner belonged to Praja Socialist Party and both of them were candidates in the bye-election. As a matter of fact it has been admitted on behalf of the respondent No. 1 that both of them belonged to the same party. Voting in modern democracies is on highly organised line and takes place, more or less on basis of parties. Very few votes are cast for the candidate in his individual capacity. It is therefore obvious that had Shri Baijnath Dube's nomination paper not been accepted there would have been only one candidate on behalf of the Praja Socialist Party and that candidate would have been the petitioner. In my opinion all the voters who had socialistic tendencies and who voted for Shri Baijnath Dube, barring, of course, a very few voters who might have cast their votes for Shri Baijnath Dube in his individual capacity, would have necessarily voted for the petitioner. The petitioner has produced ample and positive evidence to show that had Shri Baijnath Dube's nomination paper been rejected the wasted votes would have been cast for him. P.W. 8 Ram Khelawan says "Shri Baijnath Dube and the petitioner belong to the same party and if there had been only one candidate on behalf of the P.S.P., the votes secured by both of them separately would have been cast in favour of only one of them and in that way the Praja Socialist candidate would have been successful. The petitioner was more intimately known in the locality in which I was working during the election and had he continued to be the candidate of the party and not withdrawn from the field he would have secured all the votes that were cast in favour of Shri Baijnath Dube. But as the voters learnt that he was not a candidate for the P.S.P. the voters cast their votes in favour of Shri Baijnath Dube." P.W. 8 has been corroborated by Ram Lakhan P.W. 9. There is not even an iota of evidence on behalf of respondent No. 1 that in case the nomination paper of Shri Baijnath Dube had been rejected the wasted votes would have been cast for respondent No. 1 and not for the petitioner. Even the respondent No. 1 in his deposition did not claim any thing of the kind. The present case is an unique case of its kind as there were two candidates from the same party namely Shri Baijnath Dube and the petitioner both of whom belonged to Praja Socialist Party and both of whom were candidates in the bye-election. The ruling of the Hon'ble Supreme Court reported in A.I.R. 1954 page 513 Vashist Narain Sharma Vs. Dev Chandra and others is distinguishable in as much as from the facts disclosed in that ruling it does not appear that there were two candidates on behalf of the same party as in the present case. In the present case two candidates belonging to the same party were contesting the election. It is, to my mind, obvious that had the petitioner been the only candidate on behalf of the Praja Socialist Party, he would have got almost all the votes which were cast in favour of Shri Baijnath Dube.

Further, there is evidence to show that in the area in which the bye-election was held the Socialist Party commanded a large number of followers. P.W. 8, Ram Khelawan says "In the last general election there were about six seats for the Legislative Assembly for Sidhi district. All these seats were captured by the Socialist Party except one, i.e., for Deosar Constituency. I was a candidate from the Deosar Constituency on behalf of the Socialist Party in the general election. I lost the seat because in the course of election campaign I fell ill and could not carry on my canvassing. I lost by narrow margin." P.W. Jagdish

Chandra Joshi also says "There are seven seats in the Sidhi District for Legislative Assembly. Out of these six were captured by Socialist Party in the last general election".

This fact has not been controverted on behalf of respondent No. 1.

I hold, therefore, that it has been proved by positive evidence by the petitioner that as a result of improper acceptance of Shri Bajinath Dube's nomination paper the result of the election was materially affected.

Issue No. 4.—(a) The petitioner's case on this issue is set out in paragraph 8 of the petition and is the follows:—

"That the result of the election has been materially affected, as village Harra Chandreh was left out from the constituency in the Government Notification at the time of calling upon the Constituency to elect a member for Vindhya Pradesh Legislative Assembly and was added in the constituency only 2 days before the polls took place. Thus the candidates were deprived of the reasonable time and opportunity for canvassing among the voters of the said village."

On this allegation the petitioner prays for the election to be declared void under section 100(2)(c) of the Act.

The petitioner relies on section 30(b) of the Act and his case is that at the time of nomination name of the village Harra Chandreh was not included in the list of polling stations which is on file as Ex. P-1. According to the petitioner the name of the village included at page 12 Exhibit P-1 in the polling station Jogini was Harra Viran with only 12 voters. It was only 2 days before the date of the election i.e. on the 11th December 1953 that the Returning Officer by an order (Ex. P-3) corrected the mistake and it was then that instead of village Harra the name of village Harra Chandel was incorporated in the list Exhibit P-1 with the number of voters as 194. According to the petitioner, therefore, he was deprived of an opportunity to do canvassing in village Harra Chandel. The petitioner contends that the minimum time allowed for canvassing from the date of the nomination to the date of the polls under the Act is 30 days and in the present case this provision was not complied with and hence the election should be declared void.

The Returning Officer Shri Ram Nath Singh P.W. 13 admits that the mistake had occurred in the electoral roll of village Harra. He has deposed "from my orders Ex. P-3 it appears that the mistake had occurred in the electoral roll of village Harra Chandel. It was written Harra Viran with 12 votes and I got it corrected to Harra Chandel with 194 votes. This correction was done only 2 days before the election took place".

In pursuance of sub-section (2) of section 4 of the Government of Part 'C' States Act, 1951, the President passed the Delimitation Order which was published in the Gazette of India (Extraordinary), dated 15th November, 1951 and it defined the constituency as Deosar and further described it in column No. 2 of the Table appended to the Order as Deosar Kanungo circle of Deosar Tahsil.

The learned counsel for the respondent No. 1 urged that it was wrong that the village Harra was left out from the Deosar constituency. He, however, conceded that it was left out from the list of polling stations. He relied on Ex. R-1 which is on file and which is Vindhya Pradesh Gazette (Extraordinary), dated 16th November 1953 which sets out the names of the villages comprising Deosar Tahsil and which include the name of the village Harra Chandel.

The contention of the petitioner as contained in his petition is that the name of village Harra Chandreh was left out from the constituency and not from the list of polling stations prepared under section 25 of the Act. There is no issue regarding village Harra Chandreh having been left out from the list of polling stations. The petitioner has not produced the Government Notification at the time of calling upon the constituency to elect a member for Vindhya Pradesh Legislative Assembly.

In my view the petitioner has failed to prove that village Harra Chandel was left out from Deosar constituency as alleged by him in the petition. The petitioner has not been able to show that village Harra Chandel was not included in Deosar Kanungo circle of Deosar Tahsil which was the definition of Deosar constituency in President's Delimitation Order. My finding, therefore, on this issue is in the negative.

4(b) In view of my findings on Issue No. 4(a) it necessarily follows that the result of the election was not materially affected and I hold accordingly.

Issue No. 5.—(a) The case of the petitioner on this issue is set out in paragraph 9 of the petition. It is as follows:—

“That the electoral roll of village Rehi of Deosar constituency was not supplied to the Presiding Officer as a result of which 92 voters of that village could not exercise their right of franchise which has materially affected the result of the election as there is a difference of only 61 votes between the winning and the next candidate.

According to the petitioner there are villages by name Rehi, one of which is in Deosar constituency and the other is in Singrauli constituency. Village Rehi in Deosar constituency is in Keotli Patwari circle and village Rehi in Singrauli constituency is in Parai Patwari circle. According to the petitioner polling station for village Rehi of Keotli Patwari circle which is in Deosar Constituency was Kasda. His case is that the Presiding Officer of Kasda polling station was supplied the electoral roll of village Rehi of Singrauli constituency and not that of Deosar Constituency. For this reason the voters of village Rehi of Deosar constituency of Patwari circle Keotli were unable to cast their votes. Some of the voters of this village Rehi, according to the evidence led by the petitioner had actually gone for voting to Kasda polling station but they were not permitted to vote because their names were not in electoral roll that was supplied to the Presiding Officer. Only one voter of village Rehi of Deosar constituency by name Baijnath was able to cast his vote because there was a voter of his name in village Rehi of Singrauli constituency.

In support of his contention that about 70 to 80 voters of village Rehi of Deosar constituency were not allowed to vote the petitioner produced himself as P.W. 1, Shambhu Singh P.W. 2, Ramabhilakh P.W. 3, Hira Lal P.W. 4, Gora Lal P.W. 5 Baijnath P.W. 6 and Sadhugir P.W. 7 who have deposed that about 70 to 80 voters from village Rehi in Keotli Patwari circle of Deosar constituency, all of whom had decided to cast their votes in favour of the Praja Socialist Party whose symbol was hut, were unable to vote as their names were not included in the electoral roll supplied to the Presiding Officer at Kasda polling station and thus the result of the election was materially affected because the difference in the number of votes of the winning candidate, respondent No. 1 and the next highest candidate was only 61.

The respondent No. 1, on the other hand, urged that village Rehi of Keotli Patwari circle in Deosar constituency was included in Ex. P-6 which is the electoral roll which was prepared at the time of general election. It was admitted on his behalf that there was a mistake in the annual preparation of the electoral roll which is done under Rule 22 of the Representation of People (preparation of Electoral Rolls) Rules 1950. The learned counsel for the respondent No. 1 urged that the correct electoral roll for the purpose of the bye-election in 1953 must be the one prepared at the time of general election which was correct and which was published. He further urged that under Rule 22 sub-rule (2) of the Representation of the People (Preparation of Electoral Rolls) Rules 1950, the amended electoral roll of Deosar constituency “shall be deemed” to be the electoral roll for that constituency.

For this contention he relied on A.I.R. 1951 Calcutta page 139 Madhal Mandal Vs. Pran Krishna Biswas and others, in which it was held “that it is the normal meaning of use of the word “deemed”, in legislation, that by law some thing or some one which in fact it or he is not”. He also relied on A.I.R. 1954 Assam page 177 Malchand Agrawala Vs. Santolal Agrawala, which also discussed the meaning of the words “deemed to be”. For the purpose of the decision of this issue it is only necessary to show if it is true whether the electoral roll of village Rehi of Deosar constituency was not supplied to the Presiding Officer. The Presiding Officer of Kasda polling station at the time of the bye-election in 1953 Shri Ashwani Kumar Tripathy has been produced as R.W. 11 and he has admitted that the electoral roll of village Rehi marked ‘A’ in Ex. P-5 was supplied to him. That was not the correct electoral roll of village Rehi of Keotli Patwari circle in Deosar constituency. This fact has also been conceded by the learned counsel for respondent No. 1. My view, therefore, on this issue is in the affirmative.

(b) The petitioner has produced some of the voters of village Rehi of Keotli Patwari circle of Deosar constituency to prove that the voters of that village could not exercise their right of franchise. They are Hira Lal P.W. 4, Gora Lal P.W. 5, Baijnath P.W. 6 and Sadhu Gir P.W. 7, all of whom have deposed that about 70 to 80 persons from village Rehi had gone to cast their votes but were not allowed to vote as their names were not in the electoral roll which was:

supplied to the Presiding Officer. In rebuttal the respondent No. 1 has produced Nanku Gir R.W. 15, Dadu R.W. 16 both of whom are resident of village Rehi of Keotli Patwari circle. They have deposed that voters of village Rehi did not go to the polling station on the date of the polling because there was some religious ceremony in the village namely that the Bhagwat was being recited that day in the village and all the people of the village had attended the recital.

The story put forward on behalf of respondent No. 1 that the voters of village Rehi did not go to cast their votes because the Bhagwat was being recited in the village is entirely a new theory. Nothing of this sort was pleaded in the written statement filed by respondent No. 1.

I, therefore, find that it has been proved by positive evidence on behalf of the petitioner that the residents of village Rehi of Keotli Patwari circle of Deosar constituency could not cast their votes as their names were not included in the electoral roll supplied to the Presiding Officer of Kasda polling station.

5(c) The petitioner's contention is that the voters of village Rehi of Keotli Patwari circle of Deosar constituency had decided to vote for the candidate of Praja Socialist Party. But as they were not allowed to vote and as the difference between the votes secured by respondent No. 1 and Shri Baijnath Dube who was the official candidate of Praja Socialist Party was only 61 the result of election has been materially affected.

In support of his contention the petitioner has examined Goralai P.W. 5, and Sadhu Gir P.W. 7 of village Rehi who have deposed that the voters of village Rehi had decided to vote for the candidate whose symbol was 'hut' namely Shri Baijnath Dube. The learned counsel for the respondent No. 1 urged that although it is true that the voters of village Rehi could not cast their votes but they are themselves to be blamed for that. They had a remedy under the election law to have objected against their non-inclusion in the electoral roll but as they did not object they must be deemed to have chosen not to exercise their right of franchise. He relies on A.I.R. 1954 Orissa page 87 Polak Kopasam and others Vs. S. M. Patnaik which lays down that "the right to be registered as a voter should be distinguished from the right to vote at an election. The Representation of the People Act, 1950 has been enacted by Parliament in exercise of the powers conferred by Article 327, and that Act prescribes the manner in which the person entitled to be registered as a voter can get himself so registered. If a person chooses not to avail himself or herself of the procedure prescribed by the Act to get himself registered as a voter, then he loses the right to vote conferred by Section 62, Representation of the People Act, 1951. It is well settled that where a new right is created by Statute and remedy is provided by Statute the remedy so provided and no other remedy, shall be available."

In my opinion, the voters of village Rehi did not take recourse to any of the remedies provided under the Rules and they had to thank themselves if they could not exercise their right of franchise.

Moreover, it is difficult to say that the voters of village Rehi would have done in case they were allowed to vote. As has been remarked by the Hon'ble Supreme Court in A.I.R. 1954 Supreme Court page 513 Vashist Narain Sharma Vs. Dev Chandra and others "the casting of votes at an election depends upon a variety of factors and it is not possible for anyone to predicate how many or which portion of the votes will go to one or the other of the candidates." Only 2 out of 70 and 80 voters of village Rehi have been produced by the petitioner to prove that they would have voted for the candidate of the Praja Socialist Party. These 2 witnesses had no authority and could not possibly speak about what the others might have done.

In view of the above I find that the result of the election was not materially affected by the fact that voters of village Rehi could not exercise their right of franchise.

(d) There is absolutely no evidence that any objection was raised by any voter concerned against the wrong electoral roll which was supplied to the Presiding Officer of Kasda polling station against the non-inclusion of the names of the voters of village Rehi of the Keotli Patwari circle of Deosar constituency in the electoral roll supplied to the Presiding Officer.

In view of my finding on issue 5(c) that the result was not materially affected it is not necessary to give any finding on the effect of not filing any objection by the voters of village Rehi to the wrong supply of the electoral roll to the Presiding Officer.

Issue No. 6.—(a) The petitioner's case, on this issue, set out in paragraph 10 of the petition is as follows:—

"That the respondent No. 1 himself and through his workers, supporters, canvassers and agents has committed the corrupt practice of undue influence by administering oath to the voters under Peepal tree the details of which are given in the list 'B' of particulars of corrupt and illegal practices annexed to the petition."

List 'B' of the particulars annexed to the petition reads thus:—

"Shri Lal Gopal Sharan Singh, Minister for Justice and Planning, Vindhya Pradesh State, unduly influenced the voters of village Jhakhrawal of Deosar Tahsil to vote for respondent No. 1 by administering oath of Basudeo (holy Peepal tree) under the peepal tree in the said village on 11th December, 1953."

The petitioner, in support of his contention, has examined himself as P.W. 1 and Ram Khelawan P.W. 8. The petitioner in his evidence, says that he was personally present in village Jhakhrawal when the meeting was called by Shri Lal Gopal Singh and was watching the proceedings. But curiously enough, the petitioner was unable to say in which direction of the village the Peepal tree existed nor could he say as to how many people took the oath. Further he could not give the name of any person who was present at the meeting and who took the oath as alleged by him. The petitioner admitted that he did not complain about this fact to the Election Commission.

P.W. 9 Ram Khelawan has deposed that he was present at Jhakhrawal when Shri Lal Gopal Sharan Singh administered the oath of Basudeo to the people of that village. But he too was unable to name any particular resident of the village who took the oath.

In rebuttal, the respondent No. 1 has produced R.W. 1, R.W. 9 and R.W. 14. R.W. 9 Shri Lal Gopal Sharan Singh, Minister for Justice has vehemently denied having administered any oath to any body in village Jhakhrawal. He has been corroborated by R.W. 1 and R.W. 14.

It is curious that no resident of village Jhakhrawal has been produced by the petitioner in support of his contention.

In a case where the respondent is charged with having exercised undue influence in the name of religion a rigid standard of proof is required regarding his complicity in the matter, this being a major corrupt practice.

On a careful examination of the whole evidence on this issue I hold that a case of undue influence has not been established and I have, therefore, to answer this issue against the petitioner.

6(b) In view of my findings on issue No. 6(1) my answer to this issue is in the negative.

Issue No. 7.—7(a) The case of the Petitioner on this issue is set out in paragraph 11 of the petition which is as follows:—

"That the election of respondent No. 1 is void inasmuch as the return of the election expenses filed by the respondent No. 1 is false in material particulars the details of which are given in the list 'C' of the particulars of corrupt practices annexed to the petition. Paragraph No. 1 of list 'C' of the particulars annexed to the petition says "Petrol and other expenses incurred by Shri Shambhu Nath Shukla, Shri Lal Dan Bahadur Singh, Shri Lal Gopal Sharan Singh for respondent No.1 have not been shown in the return of election expenses."

The learned counsel for the petitioner argued that the respondent No. 1, who was an election agent himself violated the mandatory provision contained in section 44 of the Act and in Rule 111 of the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951 inasmuch as he did not maintain Books of Accounts.

It was further urged by the learned counsel for the petitioner that the 3 Ministers namely Shri Shambhu Nath Shukla, Shri Lal Dan Bahadur Singh and Shri Lal Gopal Sharan Singh have not produced any cash memos or given details of expenses incurred by them. It was contended that the expenses incurred by them were too small in amount. According to the learned counsel for the

petitioner the expenses incurred on the Body Guard accompanying Shri Shambhu Nath Shukla, the Chief Minister, should have been shown in the return of election expenses filed by the respondent No. 1.

In reply the learned counsel for the respondent No. 1 has urged that the Tribunal should confine its findings strictly to the allegations made in the petition which were that the expenses incurred by the three ministers were not shown in the return filed by respondent No. 1. He further urged that there was no motive for respondent No. 1 to file a false return because the total amount he could spend was Rs. 4000/- while actually the amount spent by him was only about Rs. 2800/- and thus there was a big margin and even if the expenses incurred by the 3 ministers were small in amount, they could not exceed the sanctioned limit allowed by law to the respondent No. 1.

It is true that the cash memos or receipts for certain expenditure incurred by the three ministers have not been filed nor the details of the payments made by them have been given. But this, in my opinion, is only an irregularity and does not materially affect the result of the election.

It was, in my opinion, not necessary for Shri Shambhu Nath Shukla, the Chief Minister to have shown the expenses incurred on his Body Guard who accompanied him in his official capacity.

The expression "false" occurring in clause (4) of section 124 of the Act indicates that the expenses shown in the return of election expenses are deliberately incorrectness was due to a corrupt motive on the part of the respondent No. 1.

The evidence led by the petitioner does not, in my opinion, conclusively prove either that the return of election expenses are deliberately incorrect or that this incorrectness was due to a corrupt motive on the part of the respondent No. 1.

This issue, as it is framed, is whether Shri Shambhu Nath Shukla, Shri Lal Dan Bahadur Singh and Shri Lal Gopal Sharan Singh incurred any expenses for respondent No. 1 in connection with respondent No. 1's election. All the three ministers named above have appeared as witnesses and have admitted that they did incur expenses in connection with respondent No. 1's election. There is no evidence to the contrary on behalf of the petitioner. My answer, therefore, to this issue is in the affirmative.

7(b) Exhibit P-17, which is the return of expenses incurred by respondent No. 1, filed in this case clearly shows that the respondent No. 1 has shown expenses incurred by the three ministers namely Shri Shambhu Nath Shukla, Shri Lal Dan Bahadur Singh and Shri Lal Gopal Sharan Singh, in the return of his election expenses. Nothing, to the contrary, has been shown by the petitioner. I, therefore, hold that the respondent No. 1 has shown expenses incurred by the three ministers in the return of his election expenses.

Issue No. 8.—The learned counsel for the petitioner did not press this issue and led no evidence in respect of the same. That being the position I decide this issue against the petitioner.

Issue No. 9.—In view of my findings on issue No. 7 and 8, given above, I hold that the election of respondent No. 1 is not void for the reasons stated in issues Nos. 7 and 8.

Issue No. 10.—In view of my findings on issue No. 3 that the result of the election was materially affected as a result of the improper acceptance of the nomination paper of Shri Baijnath Dube I allow the petition and declare the election of the respondent No. 1 to be wholly void under section 100(1) (c) of the Act. But in view of the unsatisfactory way in which the petitioner prosecuted the petition in the initial stages I order the parties to bear their own costs.

(Sd.) D. D. SETH, Member.

I concur.

(Sd.) DURGA PRASAD, Member.

I concur.

(Sd.) SYED MATIN AHMAD, Chairman.

The 28th May, 1955.

ORDER OF THE TRIBUNAL

We have held that the nomination of Shri Baijnath Dubey, respondent No. 2, was improperly accepted by the Returning Officer, and that the result of the Election has been materially affected by reason thereof, as contemplated by

Section 100(1)(c) of the Representation of the People Act, 1951. We, therefore, allow the petition and declare that the Election of the returned candidate, Shri Jagdish Prasad Khare, respondent No. 1, to the V.P. Legislative Assembly from the Deosar Constituency, in the bye-election held in 1953, to be wholly void.

As for the costs we order that the parties shall bear their own costs.

(Sd.) SYED MATIN AHMAD, *Chairman.*

(Sd.) DURGA PRASAD, *Member.*

The 28th May, 1955.

(Sd.) D. D. SETH, *Member.*

ANNEXURE 'A'

COPY

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 31 OF 1956

Jagdish Prasad Khare—*Appellant.*

Vs.

Yamuna Prasad and others—*Respondents.*

JUDGMENT

B. Jagannadhas, J.

This is an appeal by special leave against an order of the Election Tribunal setting aside an election on the sole ground that nomination of one of the contestants at the poll was wrongly accepted and that such acceptance had materially affected the result of the election. The successful candidate got 1,398 votes. The candidate whose nomination was wrongly accepted got 1,337 votes. The contestant who got the next largest number of votes got as many as 997 votes.

The question that arises in such a situation having regard to the decision of this Court in *Vashist Narain Sharma v. Dev Chandra and others*, 1955(1) S.C.R. 509, is how the wasted votes which are of the magnitude of 1,337 votes would have been distributed between the successful candidate and the person who got the next largest number of votes. The Tribunal came to the conclusion that out of the 1,337 wasted votes the next candidate would have got sufficient number of votes to enable him to score over the successful candidate since both the wrongly rejected candidate and the next candidate belonged to the same party.

The question that arises is whether having regard to the decision in *Vashist Narain's* case, this was a permissible mode of deciding the matter and whether such evidence was relevant and admissible. This is a question which we do not think, it is expedient for us to decide in the circumstances of this case as they exist at present. The Vindhya Pradesh Assembly to which the successful candidate was elected is now no longer in existence and the new elections are coming in very shortly. The result of our decision one way or the other has no direct value to the parties concerned and that is emphasised by the fact that the respondents have not appeared before us.

We are reluctant to decide an important legal question of this kind when both the parties are not before us to assist us in coming to a conclusion on the question that arises. Having regard to all the circumstances of this case, we do not think

that this is a case in which we ought to interfere with the decision of the Tribunal at this stage in an appeal by way of special leave.

This appeal is accordingly dismissed

(Sd.) B. JAGANNADHADAS J.

(Sd.) JAFER IMAM J.

The 11th January, 1957.

(Sd.) GOVINDA MENON J.

[No. 82/6/54/715.]

By Order,

DIN DAYAL, Under Secy.